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SUPREME COURT
STATE OF WASHINGTON
3/29/2021 1:48 PM
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Supreme Court No. 99249-5

FILED
SUPREME COURT
STATE OF WASHINGTON
4/6/2021
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SUPREME COURT OF THE STATE OF WASHINGTON

ANTONIA NYMAN,

Respondent,

v.

DAN HANLEY and ALL OTHER OCCUPANTS,

Appellant.

ON APPEAL FROM KING COUNTY SUPERIOR COURT

Honorable Regina Cahan

BRIEF OF AMICI CURIAE OF EASTSIDE LEGAL ASSISTANCE PROGRAM; COLUMBIA LEGAL SERVICES; THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON; GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY; YAKIMA VOLUNTEER ATTORNEY SERVICES; CLARK COUNTY VOLUNTEER LAWYERS PROGRAM; SKAGIT VOLUNTEER LAWYER PROGRAM, A PARTNERSHIP BETWEEN THE SKAGIT COUNTY BAR ASSOCIATION AND COMMUNITY ACTION OF SKAGIT COUNTY; LEONA C. BRATZ; TENANT LAW CENTER; THE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY; THE WASHINGTON LOW INCOME HOUSING ALLIANCE; CHILDREN'S HEALTHWATCH; EMILY A. BENFER; MICHAEL Z. LEVY; KATHRYN M. LEIFHEIT; CRAIG E. POLLACK; DAVID VLAHOV;
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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The seventeen *amici*, as identified in further detail in Appendix A, include national and local associations, legal aid providers, and experts who, based on their extensive research and work in this area, all recognize that housing is critical to protecting public health and ensuring health equity during the COVID-19 pandemic.¹

II. SUMMARY OF ARGUMENT

Eviction moratorium protections are essential to reducing the spread of COVID-19. Millions of Americans entered the COVID-19 pandemic vulnerable to eviction due to a preexisting affordable housing crisis. COVID-19-related job and wage loss left millions unable to afford rent. This has created an unprecedented eviction crisis that disproportionately affects low-income populations and communities of color and increases COVID-19 infection and mortality. The Centers for Disease Control and Prevention (“CDC”) issued an agency order (“CDC Order”) to prevent evictions from spreading COVID-19 and worsening public health.

Evidence suggests that preventing evictions effectively slows the spread of COVID-19. Without the full protections of the eviction moratoriums, evictions will likely increase, facilitating the transmission of infectious

¹ This brief was drafted in large part using contributions from Emily Benfer, professor at Wake Forest University School of Law, and with invaluable assistance by Heidi M. Brown, 3L at Seattle University, Legal Extern at Eastside Legal Assistance Program.

diseases, including COVID-19. The consequences of eviction increase social contact and hinder compliance with the key strategies to contain COVID-19, including social distancing, quarantining, and hygiene.

Low-income populations are at high risk for eviction and often exposed to social determinants of poor health and have chronic illness or disability and, as such, are at risk of serious complications or death when they contract COVID-19. People of color are more likely to have lost jobs, face eviction, contract COVID-19, lack access to healthcare, and fall severely ill with the virus. These deleterious health impacts and the spread of COVID-19 can be prevented if the Court finds the Appellant to be protected against eviction.

ARGUMENT

I. Increased Evictions are Likely in Washington if the Court finds that the Appellant can be evicted

A. Americans Faced Widespread Housing Insecurity Before the Pandemic

COVID-19 struck the United States when millions of adults and children already lived perilously close to eviction. In 2016, the last available year of nationwide eviction data, 3.7 million evictions were filed

nationally,² with over 14,000 of those filings occurring in Washington alone.³ As further evidence of the preexisting housing crisis, 21,588 people experienced homelessness in Washington in 2019.⁴

B. The COVID-19 Pandemic Increased and Worsened Housing Precarity

In July 2020, 50 million renters reported living in households that suffered COVID-19-related job or wage loss, with the highest loss among low-income households.⁵ Between April and July, the unemployment rate fluctuated between 10.2% and 14.7%; it fell to 7.9% in September.⁶ By comparison, unemployment peaked at 10.0% during the Great Recession.⁷ In Washington, leisure and hospitality—one of the industries with a majority of low-wage jobs—suffered the greatest loss of jobs over the last year.⁸

Nationwide, job loss is affecting Americans at significantly different

² *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. 3 (2020) (statement of Matthew Desmond, Maurice P. During Professor of Sociology, Princeton University), <https://bit.ly/3npCaxH>.

³ *Map and Data*, *supra* note 1.

⁴ *Total People Experiencing Homelessness*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (last visited March 16, 2021), <http://www.usich.gov/homelessness-statistics>.

⁵ Elizabeth Kneebone & Cecile Murray, *Estimating COVID-19's Near-Term Impact on Renters*, U.C. BERKELEY TURNER CNT. FOR HOUSING INNOVATION (Apr. 24, 2020), <https://bit.ly/34DIHgx>.

⁶ *The Employment Situation—July 2020*, U.S. BUREAU OF LAB. STAT. *14 (Aug. 7, 2020), <https://bit.ly/3nuwulQ> (May, June, and July figures); *The Employment Situation—September 2020*, U.S. BUREAU OF LAB. STAT. *14 (Oct. 2, 2020), <https://bit.ly/2SFpuEy>.

⁷ *Spotlight on Statistics: The Recession of 2007-2009*, U.S. BUREAU OF LAB. STAT., 2 (Feb. 2012), <https://bit.ly/2GuBoio>.

⁸ *Washington*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/regions/west/washington.htm> (last visited March 16, 2021) (WA figure); (follow hyperlinks from the map for each state, then find leisure and hospitality “12-month % change” for August 2020).

rates based on race, ethnicity, class, disability, sexuality, and geography. Sixty-one percent of Hispanic/Latinx Americans and 44% of Black Americans said that they, or someone in their household, had experienced job or wage loss due to the coronavirus outbreak, compared with 38% of white Americans.⁹

C. Without Legal Protections from Eviction for Tenants Who Do Not Pose a Risk to the Health, Safety or Property of Others, Eviction Rates in Washington will Likely Increase Substantially

If tenants whose leases have ended are not protected by the moratoriums, then any tenant whose lease term has expired during the pandemic, whose lease is month-to-month, or who is faced with the prospect of eviction through no fault of their own would be at risk of losing their home. This risk can be seen at the national scale through nationwide data.

During the pandemic the Eviction Lab at Princeton University has tracked the ebbs and flows in real-time eviction filings in 17 cities.¹⁰ These Eviction Lab efforts have shown that a significant number of property owners use the eviction process as a rent collection tool, rather than a means of removing tenants for other reasons,¹¹ and many tenants are (and have

⁹ Kim Parker, Juliana Menasce Horowitz & Anna Brown, *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19*, PEW RES. CTR. (Apr. 21, 2020), <https://pewrsr.ch/30KzSPX>.

¹⁰ *The Eviction Tracking System*, EVICTION LAB, <http://evictionlab.org/eviction-tracking> (last updated March 31, 2021).

¹¹ Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filings: Civil Courts, Property Management, and the Threat of Displacement*, SOC. FORCES, Sept. 11, 2020, at 19, <https://bit.ly/2FcNPhX>.

historically been) evicted for small amounts of money—during the pandemic, typically less than the local median amount for one month’s rent and as little as \$120.¹² Furthermore, tenants lack legal protections or supports to contest evictions, especially as demand for legal assistance has increased during the pandemic.¹³

The Eviction Lab’s research on eviction filings during the pandemic shows that 1) where eviction moratorium protections are in place, the intervention effectively chills eviction filings during the pandemic; and 2) without moratorium protections in place, eviction filings quickly reach or exceed historic filing rates.¹⁴ The CDC Order forestalls residential evictions where a tenant meets certain criteria.¹⁵ These orders were effective: In the short period between when the CARES Act protections expired and when the CDC Order took effect, new eviction filings rose quickly to exceed historical levels in almost every site without a local moratorium.¹⁶ Following

¹² Renee Louis, Alieza Durana & Peter Hepburn, *Preliminary Analysis: Eviction Claim Amounts During COVID-19 Pandemic* (Aug. 27, 2020), <https://evictionlab.org/covid-eviction-claims>.

¹³ Nationwide, an estimated 90% of landlords have legal counsel compared to only 10% of tenants in eviction proceedings. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, FAST FOCUS, NO. 22-2015, at 1-6 (Mar. 2015), <https://bit.ly/36MxjAO>

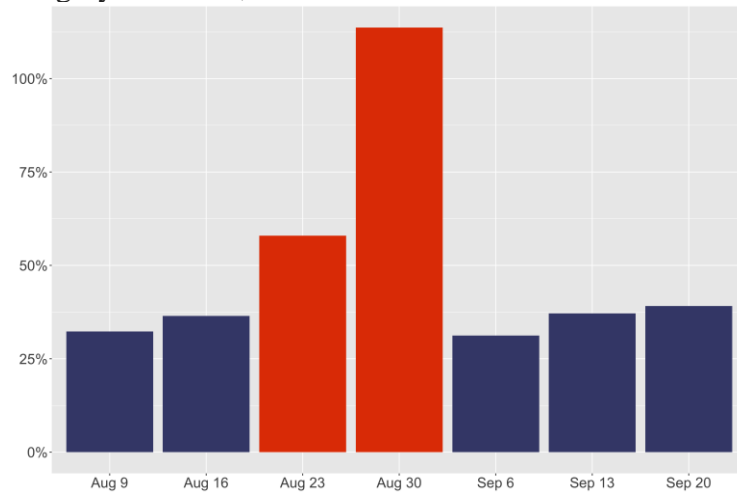
¹⁴ *Id.*

¹⁵ Temporary Halt in in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sep. 4, 2020); Nat’l Housing L. Project, CDC Eviction Moratorium – Initial Analysis, (Sep. 4, 2020) <https://bit.ly/2GFrn1C>.

¹⁶ Peter Hepburn & Renee Louis, *Preliminary Analysis: Shifts in Eviction Filings from the CARES Act to the CDC Order*, EVICTION LAB (Sept. 22, 2020), <https://bit.ly/30LMeaw>.

the CDC Order, new filings dropped dramatically in most sites studied. *See* Figure 1.

Figure 1. Weekly eviction filings relative to historical averages in 16 Eviction Tracking System sites, 8/9/2020 to 9/26/2020.¹⁷



These numbers demonstrate that the CARES Act and the CDC Order effectively prevent eviction filings. If these protections are stripped for tenants for reasons other than public health, such as the economic exceptions provided by the Washington moratorium, evictions will very likely increase. This would place families and individuals at heightened risk of contracting COVID-19, as well as related and severe health harms.

The overarching purpose of the CDC eviction moratorium to protect public health nationwide is undermined by the Washington State eviction moratorium's exceptions for no-fault evictions. Where health and safety are

¹⁷ *Id.*

at issue in an eviction action, the CDC and Washington State moratoriums are in concert with one another.¹⁸ However, in cases such as the instant one, where the tenant poses no risk to health or safety and the primary purpose of the eviction is economic, the objectives of the two moratoriums diverge. In such cases, the CDC moratorium, whose sole purpose is to protect public health, must prevail.

II. Eviction Moratoriums Slow the Spread of COVID-19 and Prevent Negative Short- and Long-Term Health Outcomes

A. Evictions Spread COVID-19, Thwarting Efforts to Contain the Virus

Eviction forces families into transiency and crowded residential environments,¹⁹ which increase new contact with others and make compliance with pandemic health guidelines difficult or impossible. Eviction increases the likelihood of “couch surfing” and staying with family and friends who may themselves be at high risk for COVID-19.²⁰ Residential crowding and

¹⁸ The preamble of the Washington State moratorium refers to multiple competing concerns arising out of the COVID-19 virus, including serious illness or death and economic hardships. Governor Inslee’s Proclamation No. 20-19.5 (2020). In contrast, the CDC moratorium’s stated purpose is “[m]itigating the spread of COVID-19 within congregate or shared living settings; or through unsheltered homelessness, mitigating the further spread of COVI-19 from one U.S. State or U.S. territory into any other U.S. State or territory; and supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels. 85 Fed. Reg 55292 (Sept. 4, 2020) at 55293.

¹⁹ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 120 (2012) (“The blemish of eviction greatly diminishes one’s chance of securing affordable housing in a decent neighborhood, stymies one’s chances of securing housing assistance, and often leads to homelessness and increased residential mobility.”).

²⁰ Michelle D. Layser et al., *Mitigating Housing Instability During a Pandemic* (forthcoming) (manuscript at 4, 14), <https://ssrn.com/abstract=3613789>.

increased contact with others drive the spread of respiratory illnesses, such as COVID-19.²¹ Even seemingly small differences in housing have been linked to substantial increases in the transmission rate of infectious disease.²² Adding as few as two new members to a household can as much as double the risk of other illness.²³ This increased likelihood of transmission for infectious disease generally comports with research on the novel coronavirus, which recognizes that individuals are at particularly high risk of contracting COVID-19 from others in their household.²⁴

Smaller, crowded spaces increase the spread of respiratory diseases like COVID-19. During the 1918 influenza epidemic, the difference between having 45 square feet and 78 square feet of living space per person was associated with a ten-fold increase in the rate of illness.²⁵ Many people

²¹ See Eric Lofgren et al., *Influenza Seasonality: Underlying Causes and Modeling Theories*, 81 J. VIROLOGY 5429, 5431 (2007) (“The person-to-person spread of virus-laden aerosol particles is greatly enhanced by having a dense population of susceptible individuals surrounding each infective subject, thereby maximizing the potential for the spread of infection.”).

²² Patrick K. Munywoki et al., *Frequent Asymptomatic Respiratory Syncytial Virus Infections During an Epidemic in a Rural Kenyan Household Cohort*, 212 J. INFECTIOUS DISEASES 1711, 1711 (2015), <https://bit.ly/3nwYDJ2>; see also Abhishek Bakuli et al., *Effects of Pathogen Dependency in a Multi-Pathogen Infectious Disease System Including Population Level Heterogeneity—A Simulation Study*, 14 THEORETICAL BIOLOGY & MED. MODELLING 1, 1 (2017), <https://bit.ly/2IaVtdW>.

²³ Michael Baker et al., *Household Crowding a Major Risk Factor for Epidemic Meningococcal Disease in Auckland Children*, 19 PEDIATRIC INFECTIOUS DISEASE J. 983, 983 (2000) (adding two adolescents or adults to a six-room home roughly doubles the risk of meningococcal disease).

²⁴ Qifang Bi et al., *Epidemiology and Transmission of COVID-19 in 391 Cases and 1286 of Their Close Contacts in Shenzhen, China: A Retrospective Cohort Study*, 20 LANCET 911, 911 (2020).

²⁵ C. Andrew Aligne, *Overcrowding and Mortality During the Influenza Pandemic of 1918: Evidence from U.S. Army Camp A.A. Humphreys, Virginia*, 106 AM. J. PUB.

who are evicted turn to homeless shelters, which often struggle with issues of overcrowding and sanitation.

Evicted households are likely to contract—and spread—COVID-19 while moving from shelter to shelter or couch to couch.²⁶ In many cases, people facing homelessness will sleep in cars or outdoors; they will have access only to public, not private, restrooms.²⁷ These environments prevent individuals and families from adhering to the CDC’s primary interventions: social distancing, maintaining good hygiene practices such as hand washing, self-quarantining, or cleaning masks and other personal protective equipment.

Housing stability is especially critical to pandemic control because infected persons can spread COVID-19 before they start to show symptoms and possibly for weeks after symptoms appear.²⁸ According to the CDC, approximately 40% of infected individuals may never show symptoms—but may transmit the virus to others.²⁹ Due to the high rate of transiency among people who face eviction, eviction is likely to spread COVID-19 by

HEALTH 642, 642 (2016) (noting that the relationship between crowding and flu was highly significant ($p < 0.001$)).

²⁶ *COVID-19 Pandemic Planning Scenarios*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 10, 2020), <https://bit.ly/36Ratf6>.

²⁷ Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 126 (2019).

²⁸ *COVID-19 Basics*, HARV. MED. SCH., <https://bit.ly/3nviSa3> (last updated Oct. 1, 2020) (summarizing studies that “have shown that symptoms could appear as soon as three days after exposure to as long as 13 days later”).

²⁹ *COVID-19 Pandemic Planning Scenarios*, *supra* note 26, at tbl.1.

exposing healthy individuals to those who are unaware they are carrying the virus or those who know they have COVID-19 but are unable to self-isolate.³⁰ In order to prevent COVID-19 spread, individuals and families must be able to shelter in place with the same household.

Eviction is associated with decreased access to primary and specialty medical care, regardless of an individual's housing status post-eviction.³¹ In addition, those facing eviction have difficulty prioritizing their health needs while fighting to maintain housing.³² From this baseline, eviction itself amplifies individual risk of COVID-19 complications and mortality. This can be particularly harmful to people who are already at risk, such as people immunocompromised due to cancer care, HIV/AIDS, or other conditions.³³ Even when infected individuals present COVID-19 symptoms, eviction decreases the likelihood that they will seek timely medical attention that could stem community transmission.³⁴ Evicted

³⁰ Michael Levy, Justin Sheen, Anjalika Nande, Ben Adlam, Andrew Greenlee & Daniel Schneider, *COVID-19 Eviction Simulations*, GITHUB (2020), <https://bit.ly/2GE4Pyf>.

³¹ See Mary Clare Kennedy et al., *Residential Eviction and Risk of Detectable Plasma HIV-1 RNA Viral Load Among HIV-Positive People Who Use Drugs*, 21 AIDS & BEHAV. 678, 681, 683 (2017). Even where physical access is not impacted, eviction may lead to decreased engagement in healthcare as a result of the physical and emotional toll of eviction, resulting in missed appointments and lack of adherence to prescribed treatment. See Niccolai, Blankenship & Keene, *supra* note **Error! Bookmark not defined.**, at 66.

³² Danya E. Keene, "That Wasn't Really a Place to Worry About Diabetes": *Housing Access and Diabetes Self-Management Among Low-Income Adults*, 197 SOC. SCI. & MED. 71 (2018).

³³ *Selected Circulatory Diseases Among Adults Aged 18 and Over, By Selected Characteristics: United States, 2018*, CTRS. FOR DISEASE CONTROL & PREVENTION (2018), <https://bit.ly/2IanmCV>.

³⁴ ROBERT COLLINSON & DAVID REED, THE EFFECTS OF EVICTIONS ON LOW-INCOME

individuals are also more likely to use emergency departments, which cater to disproportionately vulnerable patients,³⁵ for their healthcare needs when they do seek care.³⁶

Whether through increased crowding, decreased ability to maintain safe, clean, and hygienic living spaces, or limited access to healthcare, eviction is particularly threatening to individual and public health during a pandemic.

B. Eviction Increases the Rate of COVID-19 Among High-Risk Populations, Leading to Long-Term Complications or Death

People most vulnerable to eviction are more likely to suffer from poor health conditions that place them at high risk of severe or fatal cases of COVID-19. This thwarts efforts to suppress the infection rate. The lower a person's socioeconomic status, the greater their economic hardship and risk of eviction and the higher their chance of suffering from chronic disease, including conditions like heart disease, pulmonary disease, and diabetes.³⁷

HOUSEHOLDS 25 (Dec. 2018), <https://bit.ly/3lrYftK> (“Evictions could also worsen health if evicted households are more financially constrained and cut back on preventative care or healthy behavior to afford new moving costs, such as a security deposit or broker’s fee.”)

³⁵ See, e.g., Alison Rodriguez, *Nearly Half of All Medical Care in the US Is in Emergency Departments*, AJMC (Oct. 24, 2017), <https://bit.ly/34AKvWF> (“The increase in emergency room cases were able to be accounted for by certain groups including African Americans, Medicare and Medicaid beneficiaries, residents of the South and West, and women . . . [likely revealing] the vulnerable populations that potentially face healthcare inequalities.”). The World Health Organization categorizes a vulnerable population as one that is “unable to anticipate, cope with, resist and recover from the impacts of disasters.” *Vulnerable Groups*, WHO, <https://bit.ly/3d7XrXY> (last visited Oct. 6, 2020).

³⁶ See COLLINSON & REED, *supra* note 34, at 3.

³⁷ *Id.* at 57.

All of these may increase the mortality risk of COVID-19.³⁸ The CDC has identified several comorbidities that increase risk of severe illness with COVID-19, including pulmonary disease, high blood pressure, diabetes, obesity, chronic liver or kidney disease, and respiratory disease.³⁹ All of these conditions are more prevalent among low-income populations and people of color, the populations most at risk of eviction prior to and during the pandemic.⁴⁰

People at the highest risk of eviction are more likely to live in substandard housing conditions that threaten their health,⁴¹ such as poor ventilation, pest infestations, and mold—all closely associated with the development of respiratory conditions and general poor health.⁴² Similarly, evictions force renters into living conditions that increase exposure to social determinants that drive poor health.⁴³

³⁸ *Id.*

³⁹ *People with Certain Medical Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 11, 2020), <https://bit.ly/3jVuuRL>; *People at Increased Risk*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 11, 2020), <https://bit.ly/2GNtvEi>.

⁴⁰ Emily Benfer et al., *supra* note **Error! Bookmark not defined.**; *Housing is the Best Medicine: Supportive Housing and the Social Determinants of Health*, CORP. FOR SUPPORTIVE HOUSING (July 2014), <https://bit.ly/2SFpvIQ>.

⁴¹ One in ten poor households lived in inadequate housing. Wilhelmine D. Miller et al., *Healthy Homes and Communities: Putting the Pieces Together*, 40 AM. J. PREVENTIVE MED. S48, S51 (2011).

⁴² Emily A. Benfer & Allyson E. Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S1, S6 (2017).

⁴³ See Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANN. REV. L. & SOC. SCI. 15, 19 (2015); Matthew Desmond, *supra* note 19, at 91; Matthew Desmond, *supra* note 13.

Eviction is particularly traumatizing to children and affects emotional and physical well-being and development for years, if not for lifetimes.⁴⁴ Eviction increases the likelihood of emotional trauma, lead poisoning,⁴⁵ food insecurity,⁴⁶ and academic decline for children.⁴⁷ Eviction is also strongly associated with adverse childhood experiences, which have long-term negative health impacts, including increased risk of cardiovascular disease and pulmonary disease in adulthood and decreased life expectancy.⁴⁸ Children whose mothers are evicted during pregnancy are more likely to have adverse birth outcomes, such as low birthweight or preterm pregnancies.⁴⁹ Families of children born with adverse birth outcomes are

⁴⁴ HEATHER SANDSTROM & SANDRA HUERTA, URBAN INST., THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS 6 (2013), <https://urbn.is/2SCVfhB>.

⁴⁵ Gabriel L. Schwartz, Kathryn M. Leifheit, Lisa Berkman, Mariana Arcaya & Jarvis T. Chen, Is Eviction Poisonous? A Survival Analysis of Eviction and Lead Poisoning in a National Urban Birth Cohort (unpublished manuscript) (on file with author); Schwartz, *supra* note **Error! Bookmark not defined.**. See also *Homelessness Just 'One of The Concerns' When Someone Is Evicted*, NEWSWISE (Jan. 28, 2020), <https://bit.ly/3loTQHR>.

⁴⁶ Kathryn M. Leifheit, *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 SSM—POPULATION HEALTH 1, 6 (2020).

⁴⁷ Gabriel L. Schwartz, Kathryn M. Leifheit, Jarvis T. Chen, Mariana C. Arcaya & Lisa Berkman, Childhood Eviction and Cognitive Skills: Developmental Timing-Specific Associations in an Urban Birth Cohort (unpublished manuscript under publication review) (on file with author); Schwartz, *supra* note **Error! Bookmark not defined.**; see also Desmond, *supra* note 13; Thomas Kottke et al., *Access to Affordable Housing Promotes Health and Well-Being and Reduces Hospital Visits*, 22 PERMANENT J. 1, 2-3 (2017); Stephen Gaetz et al., *Youth Homelessness and Housing Stability: What Outcomes Should We Be Looking For?*, 32 HEALTHCARE MGMT. F. 73 (2019).

⁴⁸ Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*, 159 ACHIEVES OF PEDIATRICS & ADOLESCENT MED. 1104, 1107 (2005).

⁴⁹ Kathryn M. Leifheit, *Severe Housing Insecurity in Pregnancy: Association with Adverse Birth Outcomes in a Cohort of Urban Mothers and Infants*, AM. PUB. HEALTH

substantially more likely to be evicted in the first five years of their child's life.⁵⁰ The evidence is clear: Child health and housing security are closely intertwined.⁵¹

Ultimately, eviction most affects members of society most vulnerable to COVID-19 and triggers a cycle of poor health and housing instability.

C. Studies Suggest Eviction Moratorium Protections Prevent COVID-19 Deaths

Preliminary analyses show that ending eviction moratorium protections may be associated with an increased rate of COVID-19 infection and death. Two recent studies demonstrate this relationship. First, researchers from University of California-Los Angeles, John Hopkins University, Boston University, University of California-San Francisco, and Wake Forest University used varying expiration dates of state eviction moratoriums as a natural experiment to evaluate whether lifting moratoriums was associated with increased COVID-19 spread and mortality.⁵² The study considered forty-three states and the District of Columbia, which instituted moratoriums during the pandemic, and compared the twenty-six states that lifted

ASS'N (Nov. 5, 2019), <https://bit.ly/3lvdBNN>.

⁵⁰ Schwartz et al., *supra* note **Error! Bookmark not defined.**; Schwartz, *supra* note **Error! Bookmark not defined.**

⁵¹ AM. ACAD. OF PEDIATRICS, PROVIDING CARE FOR CHILDREN AND ADOLESCENTS FACING HOMELESSNESS AND HOUSING INSECURITY (2020), <https://bit.ly/3dbi0CT>.

⁵² Kathryn M. Leifheit, Sabriya L. Linton, Julia Raifman, Gabriel L. Schwartz, Emily A. Benfer, Frederick J. Zimmerman & Craig Evan Pollack, Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality (Oct. 2020) (unpublished manuscript) (on file with author).

their moratoriums to those that did not.⁵³ After controlling for mask orders, stay at home orders, school closures, and testing rates, as well characteristics of states and underlying time trends, lifting moratoriums was associated with 1.4 times higher COVID-19 mortality after seven weeks and 2.1 times higher mortality after eighteen weeks.⁵⁴ Similarly, lifting moratoriums was associated with 1.1 times higher incidence of COVID-19 after three weeks, and 1.5 times higher incidence after eighteen weeks compared to maintaining eviction moratoriums.⁵⁵

III. Eviction and COVID-19 Have Disproportionately Harmed Marginalized Communities

A. Evictions Disparately Affect Groups Based on Race and Gender

Historic trends and recent data demonstrate that people of color are more likely to face eviction during the pandemic. Race-based discrimination in eviction is evident in numerous studies: Black renters face eviction at the highest rates.⁵⁶ In Washington specifically, from 2013 to 2017 in King County, Black adults were more than five times more likely to be evicted than white adults.⁵⁷ In Pierce County, the disparity was even more

⁵³ *Id.*

⁵⁴ *Id.* at 3.

⁵⁵ *Id.*

⁵⁶ BENJAMIN F. TERESA, RVA EVICTION LAB, THE GEOGRAPHY OF EVICTION IN RICHMOND: BEYOND POVERTY (2017), <https://bit.ly/3iFEmxu>; Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115 (2016).

⁵⁷ Timothy A. Thomas, Ott Toomet, Ian Kennedy, and Alex Ramiller, *The State of*

egregious; a Black adult was nearly seven times more likely than a white adult to be evicted.⁵⁸

In another study of multiple cities, approximately 80% of people facing eviction were Black.⁵⁹ Black women are evicted at higher rates than other groups,⁶⁰ with 1 in 5 Black female renters reporting that they have experienced eviction compared with 1 in 12 Hispanic/Latinx women and 1 in 15 white women.⁶¹ Of all gender and race combinations, Black women renters are at the highest risk: in 17 out of 36 states studied, they face filings for eviction at double the rate of white renters.⁶² Family status is also a contributing factor to risk of eviction: The single greatest predictor of eviction is the presence of a child.⁶³ On average a household with children owed slightly less than the households without children and on average committed fewer lease violations, the probability of receiving an eviction judgment was 16-17% higher for households with children.⁶⁴

Evictions: Results from the University of Washington Evictions Project, University of Washington (Feb. 17, 2019), <https://evictions.study/washington/results.html>.

⁵⁸ *Id.*

⁵⁹ Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461, 467 (2003). Cities studied included New York, Chicago, Baltimore, Philadelphia, Los Angeles, and Oakland.

⁶⁰ Desmond, *supra* note 19, at 91.

⁶¹ Rachel Dovey, *What 80 Million Eviction Records Can Tell City Leaders*, NEXT CITY (Apr. 9, 2018), <https://bit.ly/30L3aOm>.

⁶² Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://bit.ly/2GNr4Sa>.

⁶³ Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303, 303 (2013).

⁶⁴ *Id.* at 314-17 (2013).

In one study conducted during the pandemic, the majority of tenants facing eviction reported unemployment or a decrease in income related to COVID-19 hardship as the reason for rent shortfall.⁶⁵ Others cited severe health issues that would make them vulnerable to COVID-19 complications.⁶⁶ Fifty percent of these tenants were women.⁶⁷ For people of color, who have one-twelfth of the wealth accumulation of white people⁶⁸ due to decades of racially discriminatory U.S. housing policy,⁶⁹ the loss of employment or an unexpected emergency can precipitate greater hardship and housing instability. Over 70% of Black and Latinx adults entered the pandemic lacking emergency funds to cover three months of expenses, while over half of white adults had such savings.⁷⁰

⁶⁵ Ninette Sosa, *A Closer Look: Arkansas Evictions During COVID-19; Tenant Stories*, KNSA FOX24 (Aug. 3, 2020), <http://www.nwahomepage.com/news/a-closer-look/a-closer-look-arkansas-evictions-during-covid-19-tenant-stories>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Janelle Jones, *The Racial Wealth Gap: How African-Americans Have Been Shortchanged Out of the Materials to Build Wealth*, ECON. POL'Y INST. (Feb. 13, 2017, 12:01 PM), <http://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth> (comparing median wealth of white and black families).

⁶⁹ See RICHARD ROTHSTEIN, *THE COLOR OF LAW*, *passim* (2017) (reviewing how de jure segregation and wealth inequality was shaped by government-directed redlining and home-ownership programs).

⁷⁰ Mark Hugo Lopez et al., *Financial and Health Impacts of COVID-19 Vary Widely by Race and Ethnicity*, PEW RES. CTR. (May 5, 2020), <http://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity>.

B. COVID-19 Has Killed Black, Indigenous, and Latinx People at Higher Rates

COVID-19 has also disproportionately harmed people of color. The CDC reports Black Americans are dying at 2.1 times the rate of non-Hispanic whites.⁷¹ Indigenous Americans as well as Hispanic/Latinx persons face an infection rate almost 3 times the rate of non-Hispanic whites.⁷² Asian, Black and Hispanic/Latinx persons are 1.3, 4.7, and 4.6 times more likely to be hospitalized with COVID-19, respectively.⁷³ Lack of health insurance drives 3.3-4.2% of COVID-19 diagnoses, with higher rates in counties with larger Black populations.⁷⁴ Others have found similarly stark disparities in COVID-19 death rates: 2.3 times higher for Black people, 1.5 for Hispanic and Latinx,⁷⁵ and 1.75 for indigenous people.⁷⁶ Black and Hispanic/Latinx people are dying at the rate of white people a decade or more older.⁷⁷ This pattern of increased COVID-19 infection rates and deaths

⁷¹ *COVID-19 Hospitalization and Death by Race/Ethnicity*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 18, 2020), <http://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Gregorio A. Millett et al., *Assessing Differential Impacts of COVID-19 on Black Communities*, 47 ANNALS EPIDEMIOLOGY 37, 37 (July 2020), <https://bit.ly/3iJ9BYv>.

⁷⁵ *The COVID Racial Data Tracker*, COVID TRACKING PROJECT, <http://covidtracking.com/race> (last visited Oct. 5, 2020).

⁷⁶ *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RES. LAB (Sept. 16, 2020), <https://bit.ly/36K8ZPL> (comparing white death rate of 47 per 100,000 with indigenous people death rate of 82 per 100,000).

⁷⁷ Tiffany Ford, Sarah Reber & Richard V. Reeves, *Race Gaps in COVID-19 Deaths Are Even Bigger Than They Appear*, BROOKINGS (June 16, 2020), <https://brook.gs/3lrRBU2>.

among people of color holds true in Washington as well.⁷⁸

Driving these numbers are deep underlying disparities in health related to the inability to social-distance in many low-wage jobs, crowded living conditions due to poverty and eviction, bias among health care providers, and disparate access to health care.⁷⁹ Other social determinants of health, like poverty and access to clean air and water, have driven larger proportions of people of color to develop comorbidities with COVID-19, like asthma or hypertension, that likely help explain their higher mortality rates. Further, most COVID-19 hotspots have been in regions or cities that have larger Black, indigenous, or Hispanic/Latinx populations.⁸⁰

People of color are more likely to suffer job loss, face eviction, and contract and face severe illness due to COVID-19. Preventing evictions is critical to saving the lives of Americans regardless of race; but for people of color, evictions are significantly more likely to result in complications and death from COVID-19. Public health and health justice requires that *all*

⁷⁸ *Race and ethnicity data dashboard*, King County Public Health (March 15, 2021), <https://www.kingcounty.gov/depts/health/covid-19/data/race-ethnicity.aspx>. See also *COVID-19 morbidity and mortality by race, ethnicity and spoken language in Washington state*, Washington State Department of Health (March 17, 2021), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/data-tables/COVID-19MorbidityMortalityRaceEthnicityLanguageWAState.pdf>.

⁷⁹ Emily A. Benfer, Seema Mohapatra, Lindsay F. Wiley & Ruqaiijah Yearby, *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequity During and After COVID-19*, YALE J. HEALTH POL'Y L. & ETHICS (forthcoming 2020) (on file with authors), <https://bit.ly/2GzVW9c>.

⁸⁰ Ford, Reber & Reeves, *supra* at 77.

people have equal opportunity to achieve good health and protect themselves from COVID-19.⁸¹ Protecting public health during this pandemic requires protecting those most likely to contract, spread, and die from COVID-19, including people in poverty and people of color, who are more likely to be evicted and more likely to suffer severe harm during the pandemic. Eviction moratoriums are a critical public health tool that must be employed to their full extent.

CONCLUSION

There is a close, proven connection between eviction and public health. Eviction moratoriums have mitigated COVID-19 spread and death. Allowing the eviction moratoriums to apply to their full extent will help control the pandemic, protect the public health, and prevent severe harm for millions of adults and children, especially in communities of color.

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⁸¹ Emily Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 275 (2015), <https://bit.ly/2SDjCvE>.

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Appendix A

IDENTITY AND INTEREST OF AMICI CURIAE

The seventeen amici include: national association and organizational amici that represent medical professionals who strive to advance the health of children, adolescents, adults, and disadvantaged and minority populations; and individual amici who are sociologists, epidemiologists, and public health, law, nursing, and medical school faculty. They are the nation's foremost authorities on eviction, housing, and health. Based on their extensive research and work in this area, all amici recognize that housing is critical to protecting public health and ensuring health equity during the COVID-19 pandemic.

EASTSIDE LEGAL ASSISTANCE PROGRAM (ELAP) is a qualified legal service provider consisting of staff attorneys, pro bono volunteers, and low bono contract attorneys who are dedicated to working with people who could not otherwise afford to work with a lawyer and are facing domestic violence, housing, financial, healthcare, immigration and other issues that need a legal solution. ELAP also educates communities about their legal rights. ELAP supports people who are experiencing housing insecurity all around King County by partnering with municipalities and other community partners.

GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY (GLMA) is the largest and oldest association of lesbian, gay, bisexual, transgender and queer (LGBTQ) health professionals. GLMA's mission is to ensure health equity for LGBTQ and all sexual and gender minority (SGM) individuals, and equality for LGBTQ/SGM health professionals in their work and learning environments by utilizing the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research. Previously known as the Gay and Lesbian Medical Association, GLMA is a national leader in addressing the full range of health concerns and issues affecting LGBTQ people, including by ensuring that sound science and research informs health policy and practices for the LGBTQ community.

YAKIMA VOLUNTEER ATTORNEY SERVICES (Yakima VAS) is a nonprofit organization dedicated to reducing barriers to low income individuals by connecting them through clinics, individual consults, and full representation. Yakima VAS operates the largest housing legal aid program in Yakima County.

SKAGIT VOLUNTEER LAWYER PROGRAM, A PARTNERSHIP BETWEEN THE SKAGIT COUNTY BAR ASSOCIATION AND COMMUNITY ACTION OF SKAGIT COUNTY (Skagit VLP) is a

partnership between the Skagit County Bar Association and Community Action of Skagit County. Skagit VLP provides free legal assistance to low-income people in Skagit County and relies upon the volunteer services of local attorneys. Skagit VLP is the primary source for housing related legal aid services in the county. **LEONA C. BRATZ, J.D.** is a private practice attorney at the firm LeGros Buchanan & Paul, P.S. who volunteers at the Skagit VLP housing justice project.

TENANT LAW CENTER's mission is to help end homelessness by preventing illegal or unnecessary housing loss from evictions and subsidy terminations. Tenant Law Center's approach emphasizes early intervention and problem solving to avoid unnecessary and costly litigation that threatens long-term housing stability. Our program strives to provide holistic, client-centered services that consider not just the legal issue, but the root causes of a household's instability. The Tenant Law Center is a program of Catholic Community Services of King County.

COLUMBIA LEGAL SERVICES (CLS) is a non-profit civil legal aid organization that advocates for laws that advance social, economic, and racial equity for people living in poverty. To this end, CLS engages in impact litigation and policy advocacy, including to promote housing justice. In particular, CLS engages in advocacy to recognize and remedy racial

inequity in housing, with a focus on representing people who face barriers to housing based on their criminal records and tenants in immigrant communities. CLS also advocates on behalf of youth and adults who lack shelter, including challenging laws that criminalize behaviors associated with homelessness. CLS supports tenant communities in efforts to enhance their collective power and transform unjust housing policies.

The Fred T. Korematsu Center for Law and Equality (“Korematsu Center”) is a non-profit organization based at the Seattle University School of Law. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of over 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all, with a special focus on racial justice. It filed an amicus brief in *Yim v. City of Seattle*, 2:18-cv-736 (W.D. Wash), to inform the court of the positive racial impact a Seattle ordinance would have on access to housing. Though concerned for all who face eviction, the Korematsu Center is especially concerned about the severe disparate effect mass evictions will have on minority communities. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

CLARK COUNTY VOLUNTEER LAWYERS PROGRAM's

(CCVLP) mission is to provide access to justice in Clark County for low income individuals by facilitating civil legal services through volunteer attorneys. CCVLP has been operating in the community for more than 30 years. CCVLP works closely with many community partners to contribute to the provision of legal services across all communities in Clark County. CCVLP operate the primary housing legal aid program in Clark County.

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

("ACLU") is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters. It is dedicated to the preservation and defense of civil liberties and civil rights and has long worked to defend constitutional rights including those at issue in this case. The ACLU is committed to ending the criminalization of poverty and homelessness and works to promote racial equity in all contexts.

The **WASHINGTON LOW INCOME HOUSING ALLIANCE's** mission is to lead the movement to ensure that all our residents thrive in safe, healthy, affordable homes. We do this through advocacy, education, and organizing. Our vision is that all Washington residents have the opportunity to live in safe, healthy, affordable homes in thriving communities.

CHILDREN’S HEALTHWATCH is a nonpartisan network of pediatricians, public health researchers, and children’s health and policy experts. Children’s HealthWatch’s findings help policymakers and the public better understand the social and economic factors that impact children’s health so they can make well-informed policy decisions that can give all children equal opportunities for healthy, successful lives.

EMILY A. BENFER, J.D., LL.M., is a visiting Professor of Law at Wake Forest University School of Law and a national expert on housing law, health justice, and the COVID-19 eviction crisis. Professor Benfer is the appointed chair of the American Bar Association's COVID-19 Task Force Committee on Eviction. She is the co-creator of the COVID-19 Housing Policy Scorecard with the Eviction Lab at Princeton University and the principal investigator in a nationwide study of COVID-19 eviction moratoriums and housing policies and an investigator in a study of state eviction moratoriums and COVID-19 infections and mortality rates.

MICHAEL Z. LEVY, Ph.D., is an associate professor of epidemiology at the Perelman School of Medicine of the University of Pennsylvania. He specializes in developing methods to model and control the transmission of infectious diseases in cities. He has worked on housing policy and is the

principal investigator of a model estimating how evictions drive COVID-19 spread.

KATHRYN M. LEIFHEIT, Ph.D., is an epidemiologist and postdoctoral fellow at the University of California Los Angeles Fielding School of Public Health and an expert on the effects of eviction on child and population health. She is a principal investigator in a study of expiring eviction moratoriums and COVID-19 infection and mortality rates.

CRAIG E. POLLACK, M.D., MHS, is the Katey Ayres Endowed Associate Professor at the Johns Hopkins University Bloomberg School of Public Health, School of Nursing, and School of Medicine. He is a national expert on the connection between housing and health and continues his clinical practice as a primary care physician at the Johns Hopkins Outpatient Center. He is also a principal investigator in a study of eviction moratoriums and COVID-19 infection and mortality rates.

DAVID VLAHOV, Ph.D., RN, is a professor of nursing at the Yale School of Nursing and a professor of epidemiology of microbial diseases at the Yale School of Public Health. He is also the co-director of the National Program Office for the Robert Wood Johnson Foundation's Culture of Health: Evidence for Action Program.

Individual amici participate in this brief in their individual capacity and based on their expert opinions. The views expressed by individual amici herein do not necessarily reflect the policies or positions of host institutions or employers.

EASTSIDE LEGAL ASSISTANCE PROGRAM

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